IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 9TH NOVEMBER 2006 / 18TH KARTHIKA 1928

ST.Rev..No. 34 of 2005()

TA.462/2002 of S.T.A.TRIBUNAL,ADDL.BENCH,KZD.
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REVISION PEITIONER/APPELLANT/ASSESSEE:

M/S.PARISONS EXPORTS INC. , 6/1183,
CHEROOTY ROAD, KOZHIKODE.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

RESPONDENT/RESPONDENT/REVENUE:

STATE OF KERALA REP. BY SECRETARY TO
GOVERNMENT, TAXES DEPARTMENT, SECRETRIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. GEORGEKUTTY MATHEW.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 09/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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S.T.REV. No. 34 OF 2005

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Dated this the 9th day of November, 2006.

JUDGMENT

Ramachandran Nair, J.

The issue raised is whether the Tribunal is justified in sustaining assessment of Palmolein sold under brand name "Liberty" under Section 5(2) of the KGST Act. The scheme of the Section is to provide tax at the point of sale of the item with the brand name. Petitioner's case is that the item is sourced from abroad and petitioner purchased the article from the first seller in the State, who has charged sales tax. However, petitioner put the items in retail pack and sold under the brand name "Liberty" . The question is whether the petitioner's sale attracts tax under Section 5(2) of the Act. The issue is covered against the petitioner by two decisions of this court, one reported in **Bechu & Co. v. Assistant Commissioner (Assessment)** (2003(2) K.L.T. 1009) and the other in **Cryptom Confectionaries (I) Pvt. Ltd. v. State of Kerala** (2005(4) K.L.T. 463). The contention of the counsel is that in order to attract tax under Section 5(2) of the Act, the assessee, selling under brand name, should be the manufacturer of the goods in India.

According to counsel, Palmolien is manufactured abroad and it is imported by other parties, from whom petitioner purchased. Even if the item is manufactured abroad, we agree with the view taken by the Tribunal that the place of manufacture is immaterial for the purpose of levy of tax under Section 5(2) of the Act and all what is required is that the item sold under brand name or trade name should be a manufactured product. In other words, even if petitioner purchased the manufactured product in bulk, packed it in retail packs, and sold under brand name, liability is attracted.

In the circumstance, and following the two decisions, we dismiss the Sales Tax Revision Case.

(C.N.RAMACHANDRAN NAIR, JUDGE)

(K.M. JOSEPH, JUDGE)

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K.S.RADHAKRISHNAN & K.M.JOSEPH, JJ.

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W.A. No. OF 200

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JUDGMENT

Dated this the day of February, 200.